IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10627 OF 2004

Amarjeet Singh Gurubaksh
Singh Anand. .. Petitioner.

vs.

Gurubaksh Singh Surat Singh
Anand & Ors. .. Respondents.

Mr. S.M. Gorwadkar for petitioner.
Mr. G.S. Godbole with Mr. S.S. Kanetkar
for Respondent No.3.
Mr. K.B. Nambiar for Respondent No. 1.

CORAM : A.P. DESHPANDE, J.

DATE : 20th December, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The petitioner herein is the original defendant no. 2 whereas the respondent no. 1 is the original plaintiff and the 2nd respondent is the partnership firm. Other respondents are the other partners. The respondent no. 1 instituted a suit

in the Court of Civil Judge, Junior Division bearing Regular Civil Suit No. 121 of 2004 for dissolution of the partnership firm and rendition of accounts. The respondents objected to the valuation of the suit and the jurisdiction of the trial Court. The trial Court framed a preliminary issue in relation to the valuation and jurisdiction and answered the same in favour of the plaintiff by passing an order below Exhibit - 53. The trial Court held that the suit is properly valued and aggrieved by the said order, the present writ petition has been filed.

2. The suit has been valued under Section 6 (iv) (i) of the Bombay Court Fees Act and the relevant para in the plaint in relation to valuation reads thus:-

> "13. The suit is for accounts and for dissolution of the firm. The Plaintiff is not certain as to the exact amount due and payable by the Defendants to the Plaintiff. The Plaintiff has therefore valued the suit at Rs. 1000/- and the Plaintiff has paid requisite court fee stamp under section 6(IV)(I) of Bombay Court Fee Act, 1959."

Section 6(iv)(i) of the Bombay Court Fees Act, 1959 reads thus :-

"(i) for accounts.

In suits for accounts according to the amount at which the relief sought is valued in the plaint or memorandum of appeal, subject to the provisions of section 8, and subject to a minimum fee of one hundred rupees."

The learned counsel for the petitioner submits that Section 6 (iv) (i) requires that in suits for accounts the valuation has to be according to the amount at which the relief is sought is valued in the plaint, subject to the provisions of Section 8 and subject to a minimum fee of Rs. 100/-. My attention is invited to para 9 of the plaint wherein it is pleaded as under :-

"9. The Plaintiff submits that the landed property where the Hotel Samrat International is constructed belongs to the Defendant No. 1 Firm. Similarly the building consisting of ground plus two storeys is also belonging to the defendant no. 1 firm. The all moveable articles in the said building are purchased and acquired and brought into the stock of the firm, for the purpose and in the course of the business of the defendant No. 1 Firm. The

> Plaintiff has therefore 1/4th share in the said assets of the Defendant No. 1 firm and also in the Good Will of the Defendant No. 1 firm."

Referring to the averments made in the said para it is submitted that the landed property whereon Hotel Samrat International is constructed belongs to the partnership firm so also the building consisting of ground plus two storeys is also that of the partnership firm. Reference is also made to the moveable articles in the building and the stock of the firm to be owned by the firm. Placing reliance on the averments made in para 9 of the plaint and other paras, it is submitted that the valuation made by the plaintiff is arbitrary and whimsical and the under valuation made by the plaintiff has to be rejected. Truly speaking, the plaintiff has not valued the suit claim but has paid the minimum court fee stamp as is required by section 6 (iv)(i). Placing reliance on the judgment of the Supreme Court in the case of Abdul Hamid Shamsi vs. Abdul Majid and others, reported in (1988) 2 SCC 575 it is submitted that the plaintiff in a suit for accounts is obliged to value the claim in the suit tentatively. It should not be arbitrary and deliberately undervalued so as to choose a court with a limited jurisdiction or otherwise. The Supreme Court while dealing with valuation of a suit

for dissolution of partnership firm and accounts has made the following observations in para 7.

> "7. It is true that in a suit for accounts the correct amount payable by one party to the other can be ascertained only when the accounts are examined and it is not possible to give an accurate valuation of the claim at the inception of the suit. The plaintiff is, therefore, allowed to give his own tentative valuation. Ordinarily the court shall not examine the correctness of the valuation chosen, but the plaintiff cannot act arbitrarily in this matter. If a plaintiff chooses whimsically a ridiculous figure it is tantamount to not exercising his right in this regard. In such a case it is not only open to the court but its duty is to reject such a valuation. The cases of some of the High Courts which have taken a different view must be held to be incorrectly decided."

3. The law laid down by the Apex Court is very clear that in the first place the plaintiff need to make his own tentative valuation and ordinarily the court is not supposed to examine the correctness of the said valuation but if the plaintiff sets out a

ridiculously low figure, which appears to the Court to be wholly arbitrary, then the Court is obliged to reject the said valuation. Turning to the facts of the present case and more importantly the averments made in paras 9 and 13 would reveal that the plaintiff had valued the suit in an arbitrary manner. Perusal of the order passed by the trial court reveals that it proceeded on the footing that no partner can get his share in specie in the partnership property but he gets the residue proportionate to his share and hence the Court concluded that unless and until accounts are settled the suit cannot be precisely valued. The trial Court has then concluded that in a suit for accounts unless and until an inquiry is made under Section 8, amount of court fee cannot be computed and jurisdiction cannot be determined. The trial Court has passed the order on a footing that in no case tentative valuation made by the plaintiff can be tested to determine the pecuniary jurisdiction of the Court. Having regard to the law laid down by the Apex Court, the impugned order passed by the trial Court has to be quashed and set aside and the matter needs to be remanded back to the trial Court to ascertain as to whether the tentative valuation made by the plaintiff is on the face of the record arbitrary and ridiculously on the lower side. This inquiry is necessary as the jurisdiction of the Court depends on it.

4. In the result, the impugned order is quashed and set aside. The matter is remanded to the trial court for determination of the issue referred to hereinabove and for passing appropriate order in accordance with law.

5. Rule is made absolute in above terms.

(A.P. Deshpande, J.)